MOTION FILED

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No. 74-1044

In The Supreme Court of The United States

OCTOBER TERM, 1974

COMMONWEALTH OF MASSACHUSETTS BOARD OF RETIREMENT; ROBERT Q. CRANE, ANGELO AMATO and J. JOSEPH MALONEY, JR., as They are Members of the COMMONWEALTH OF MASSACHUSETTS BOARD OF RETIREMENT; JAMES W. CALLANAN, Executive Secretary of the COMMONWEALTH OF MASSACHUSETTS BOARD OF RETIREMENT; and JOHN F. KEHOE, JR., COMMISSIONER of PUBLIC SAFETY of the COMMONWEALTH OF MASSACHUSETTS,

Appellants,

v.

ROBERT D. MURGIA,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF MOTION OF APPELLEE TO AFFIRM

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Appellants,

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Appellee.

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The American Medical Association respectfully moves for leave to file a brief amicus curiae in support of the Motion of Appellee to Affirm this case. Appellee's attorneys have consented to the filing of this brief.

Respectfully submitted,

/s/ BERNARD D. HIRSCH
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Interest of the Amicus Curiae

The American Medical Association is the national professional association of physicians. Founded in 1846, the Association has a current membership of 208,000 physicians and serves as the representative of the medical profession in the United States and its Territories.

The goals of the American Medical Association, as written into the Association's Constitution more than a century ago, are "to promote the science and art of medicine and the betterment of public health." "The betterment of public health" in more recent years has been interpreted by the members of the medical profession to encompass the assurance of quality in life from the time of inception until cessation.

A sizeable portion of the Association's resources and efforts have been devoted through the years to the development of programs and services that would meet the medical and social needs of all segments of the American population. As advances in medical science have brought about improvements in the provision of medical care, higher levels of health education, better sanitation and general living conditions and the conquest of the severe diseases of childhood, dramatic increases in the number of older persons in the population have occurred. In 1955, a Committee on Aging was established by the Association to study the special problems of the aging and to propose methods for approaching these problems. One of the particular concerns of this Committee has been the effect upon society and the affected individual of arbitrary, compulsory retirement policies based solely upon attainment of a specific chronological age.

The following Position Statement is presented to the Court in support of plaintiff's suit challenging the constitutionality of MASS. GEN. LAWS ch. 32, § 26(3) (1966), providing for a mandatory retirement system which operates despite the ability of a member of the Uniformed Branch of the Massachusetts State Police to continue to perform his official functions for the Commonwealth of Massachusetts in a satisfactory manner.

Position Statement

It is the position of the American Medical Association that the nation's social policy for the aging should ensure that middle aged and older workers have the opportunity to continue in productive employment as long as they wish and are able physically, mentally, and medically to maintain the appropriate level of job efficiency. Such opportunities will enable many more middle aged and older people to look forward to more years of independence, dignity, and usefulness. The American Medical Association believes that the middle aged and older workers who are physically, mentally, and medically able to continue working should have a choice about when, or even *if* they wish to retire.

Unrealistic employment or retirement policies create problems for the individual, the family, and the community. For the individual, such policies set him apart from the rest of society and classify him as a non-productive member. They deny him the satisfaction of full participation in community life and may prevent him from being financially independent. Arbitrary retirement policies coupled with the denial of work opportunity seriously threaten the health of the individual concerned. Medicine sees in mandatory retirement a direct threat to the health and life expectancy of the persons affected.

For society, the failure to use the wisdom, experience, and productivity of middle aged and older persons creates voids that may be filled by those less capable. Instead of using proficient middle aged and older people, society sets up special agencies to care for them in their dependency, then spends more funds to train new younger workers. These losses could be reduced if middle aged and older persons had more opportunities to remain productive.

Middle aged and older people usually have longer periods of unemployment, have more difficulty in finding new jobs, and are frequently subject to forced retirement at an arbitrarily determined age.

In the opinion of the American Medical Association, any decision for or against retirement should rest on the same fundamentals as does a decision for or against hiring: (1) the individual's desire to work; and (2) the individual's ability to work.

Chronological age has been observed to have no magic in terms of judgment, ability, and physical dexterity. Individuals may lose these qualities at age 40 or retain them past age 80. The granting and continuance of employment opportunities should be based on the individual's competence and ability — not his age.

Compulsory retirement on the basis of age impairs the health of many individuals who might otherwise benefit from medical advances and improved social conditions. The physical and mental health of an individual can be affected by loss of status, lack of meaningful activity, fear of becoming dependent, and by isolation. Compulsory retirement produces a chain reaction in the health of such persons.

Man's increasing life expectancy will prove of little use to him if at an arbitrary age he is denied the right to work and produce. Further, if he is forced into idleness, it is questionable whether our society can survive the financial burden of larger numbers of dependent persons. Our society and economy need the productive contributions that middle aged and older men and women can make.

Arbitrary segregation of individuals because of arbitrarily determined chronological age is not healthy for the nation or the individual. The sudden cessation of productive work and earning power of an individual, caused by compulsory retirement, often leads to physical and emotional illness and premature death.

In joining in this litigation, the American Medical Association can better implement the 1971 policy statement adopted by its House of Delegates declaring:

> Since compulsory retirement and artificial barriers to employment based on age can be prime factors in the deterioration of health, middle aged and older workers should be afforded equal opportunities with others for gainful employment, based on their personal desires and capabilities.

The American Medical Association believes that Mass. Gen. Laws ch. 32, § 26(3) (1966) should be declared invalid and in violation of the Fourteenth Amendment to the United States Constitution in that it arbitrarily discriminates against persons who have reached a specific chronological age. This class discrimination has no rational relationship to a legitimate governmental purpose and deprives the members of the class of valuable property rights without due process of law in the same manner as other laws held invalid by the Supreme Court on the basis of discrimination against persons of a given race, sex, or national origin.

Conclusion

For the reasons stated herein and in the "Argument" in support of Appellee's Motion to Affirm, the American Medical Association respectfully urges this Court to declare said § 26(3) of Mass. Gen. Laws ch. 32, unconstitutional and issue a mandatory injunction requiring the Commonwealth to reinstate Appellee and all others similarly discriminated against as a member of the Uniformed Branch of the Massachusetts State Police and to continue such employment until such time as the employee voluntarily retires, is incapable of performing assigned duties, or otherwise furnishes the Commonwealth of Massachusetts with valid cause for discharge.

Respectfully submitted,

/s/ Bernard D. Hirsh
Attorney for the American Medical Association Amicus Curiae

September 2, 1975

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion for Leave to File Brief Amicus Curiae in Support of Appellee's Motion to Affirm and Brief Amicus Curiae in Support of Appellee's Motion to Affirm have been served upon defendants by causing copies thereof to be hand delivered to their counsel, Francis X. Bellotti, Attorney General, 373 State House, Boston, Massachusetts 02133, on this 2nd day of September, 1975.

/s/ Bernard D. Hirsh